IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7639 OF 2007

1. Union of India and 3 ors.] .. Petitioners

Versus

Shri Ramesh Raikar] .. Respondents

Mr. Suresh Kumar for the petitioners.

Mr. Rajendra P. Saxena for the respondent.

CORAM: S.B. MHASE &
D.G. KARNIK, JJ.

DATED: 15TH OCTOBER, 2007

P.C. :

1. Heard Mr. Suresh Kumar for the petitioners.

2. By this petition, the petitioners challenge the judgment and order dated 24th April, 2007, passed by the Central Administrative Tribunal (for short "Tribunal").

3. The services of the respondent were terminated by the petitioners on the ground of misconduct viz. absence from service for 23 days. The respondent

challenged the enquiry and the termination by filing an application before the Tribunal. The Tribunal allowed the application principally on two grounds. It held that the enquiry proceedings were held in a casual manner and the enquiry was vitiated. It also held that the punishment of removal from service for absence of 23 days (which according to the respondent was on medical grounds) was excessive, harsh and disproportionate to the alleged misconduct. Both these findings are findings of fact and no perversity in the findings is shown. In the circumstances, we are not inclined to interfere in the decision of the Tribunal in exercise of writ jurisdiction.

4. Mr. Suresh Kumar invited our attention to the decision of the Supreme Court in the case of **State of Punjab & ors. Vs. Dr. Harbhajan Singh Greasy** (1996) 9 SCC 322 and submitted that if the enquiry was improper the Tribunal ought to have remanded the matter back for fresh enquiry and the Tribunal erred in ordering reinstatement. It is true that where the enquiry is defective, the Tribunal can send the matter back for fresh enquiry. However, in our view the order of the Tribunal not ordering fresh enquiry cannot be faulted for the following reasons. The respondent had stated that his absence was on medical grounds. The Tribunal

has recorded a finding that the punishment of dismissal was disproportionate to the alleged misconduct. As such, we see no useful purpose will be served by sending the matter back to the Enquiry Officer for fresh enquiry.

5. For these reasons, we decline to exercise writ jurisdiction under Article 226 of the Constitution of India. Writ Petition is, accordingly, rejected summarily.

Sd/-
[D.G. KARNIK, J.]

Sd/-
[S.B. MHASE, J.]